

STATE OF MICHIGAN
COURT OF APPEALS

LEONARD REILLY,

Plaintiff-Appellant,

v

PROPER MOLD & ENGINEERING, INC., and
NORTH RIVER INS CO.,

Defendants-Appellees.

UNPUBLISHED
November 6, 2003

No. 243422
WCAC
LC No. 02-000004

Before: Gage, P.J., and White and Cooper, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from the Worker's Compensation Appellate Commission's (WCAC's) order reversing the magistrate's decision granting plaintiff an open award of benefits. We affirm.

Plaintiff claimed a work-related disability due to loss of balance attributed to peripheral neuropathy aggravated by work conditions. The parties do not dispute that plaintiff is disabled from working; the relevant question is whether his disability arose from his employment with defendant Proper Mold & Engineering (hereinafter defendant). Plaintiff had polio as a child, which resulted in muscle atrophy and problems with his left leg. He has also been diagnosed with Charcote-Marie-Tooth [CMT] syndrome, an inherited condition which causes peripheral neuropathy and affects his ability to stand and balance.

From 1985 to September 1999 plaintiff worked for defendant as a tool builder, operating machines which cut metal. Plaintiff's job involved constant standing and walking up and down steps to and from machines. The machines plaintiff operated used a cutting oil called Acculube. Plaintiff also frequently used mineral spirits as a solvent to clean the machines. Plaintiff noticed that use of Acculube and mineral spirits caused a burning sensation in his throat. He also developed a persistent cough. In 1998 plaintiff's cough grew worse, and he noticed that he was starting to lose his balance quite frequently. He sought treatment for these problems and was medically restricted from climbing, balancing, or driving. Plaintiff's condition is progressive. He cannot return to work. He cannot stand long due to pain, and would probably fall off the machines due to his present lack of balance. Plaintiff last worked for defendant in September of 1999.

Plaintiff's petition for disability benefits alleged that his pre-existing peripheral neuropathy was significantly aggravated by his workplace exposure to solvents. In support of this theory, plaintiff testified on his own behalf and presented the expert testimony of neurologist James Voci, MD. Dr. Voci specialized in disorders of the peripheral nervous system and began treating plaintiff in October 1999. Voci testified that peripheral nerves are sensitive to toxic exposure, and that some organic solvents are known to damage peripheral nerves. Voci testified that plaintiff's inherited CMT syndrome could make him more susceptible to one of these solvents, which would then lead to a peripheral nerve injury, explaining "It's logical to conclude that if you have a borderline functioning nerve that is then put or exposed to a situation that could be potentially neurotoxic, that the nerve will be more likely to get damaged than a nerve that is not hereditarily challenged." Voci excluded all other causes of plaintiff's peripheral neuropathy except CMT and chemical exposure. The progression of plaintiff's symptoms was consistent with either an inherited neuropathy or chemical exposure. The symptoms would not be expected to subside after the chemical exposure ceased.

In support of their position, defendants presented testimony from neurologist Gerald Robbins, DO, and Shlomo Mandell, MD, who specialized in occupational medicine and internal medicine, respectively. Dr. Robbins diagnosed plaintiff as suffering from CMT syndrome and post-polio syndrome, neither of which had any relationship to plaintiff's employment. However, Robbins admitted that questions relating to neuropathy associated with occupational exposure were outside his area of expertise. Dr. Mandell testified that plaintiff's present condition was consistent with CMT and post-polio syndrome.

The magistrate concluded that plaintiff testified truthfully and so accepted the facts he presented. The magistrate found defendants' experts' testimony of little use in determining the cause of plaintiff's condition, noting that Dr. Robbins said that peripheral neuropathy caused by chemical exposure was outside his area of expertise and that Dr. Mandell claimed a lack of information which he could have obtained. The magistrate accepted plaintiff's theory of causation based on Dr. Voci's testimony, explaining as follows:

Dr. Voci, on the other hand, impressed me as being quite knowledgeable on the condition of peripheral neuropathy and its various causes. In Plaintiff, he ruled out all but two possible causes; CMT and chemical exposure. He theorized that Plaintiff's rapid acceleration of symptoms could be due to the fact that he has a fragile nervous system due to the CMT, which was then compromised by the chemical exposure at work, bringing on the disabling peripheral neuropathy. It is possible that his inherited neuropathy made him more susceptible to a reaction to one of the solvents or chemicals he came into contact with at work, which would explain why coworkers might not have had any symptoms yet Plaintiff did. . . . After reviewing all of the medical evidence, I find this to be the most logical and rational explanation for Plaintiff's disabling symptoms. I am convinced and find as fact that Plaintiff's current disability was contributed to by his exposure to solvents at work, and is therefore compensable.

Defendants appealed to the WCAC, arguing that the magistrate's finding of causation was not supported by competent, material, and substantial evidence on the whole record. The Commission agreed with defendants' arguments, pointing out that Dr. Voci's testimony regarding causation was couched in equivocal, uncertain terms. The WCAC noted that Dr. Voci

testified that *some* organic solvents are known to cause damage to peripheral nerves, and that it was *possible* that exposure to solvents could have caused or exacerbated plaintiff's condition, but never directly stated an opinion regarding causation. Furthermore, Dr. Voci did not know the actual chemicals plaintiff was exposed to, let alone the level of exposure or the duration. The WCAC wrote:

We recognize that a medical opinion is not necessarily invalid because it is tentatively expressed. Compensation may be awarded based on an assessment of the probabilities in light of the background factual circumstances and any opinion testimony. Opinions tentatively expressed may not on that account be discounted.

* * *

Knowing what someone was actually exposed to, the duration, and concentration of exposure seems to us an elementary first step in a scientific, medical analysis This case does not present a situation where an individual suffers an acute reaction to a specific exposure or injury. If symptoms arise in close temporal proximity to a direct injury or exposure, one might reasonably make the causal connection without defining every causal link with a reasonable degree of certainty. That is not this case. Plaintiff's symptoms have arisen insidiously. Given the complexity of his medical history, a reasoned scientific analysis is required. That analysis cannot even commence with[out] knowing what plaintiff was exposed to. In the absence of those proofs, Dr. Voci's opinion crosses the evidentiary line into impermissible speculation. The medical complexity of this case does not lend itself to resolution by lay opinion only. We find, therefore, that the magistrate's award is not supported by competent, material, and substantial evidence on the whole record and is accordingly reversed.

On appeal plaintiff argues that the Commission erroneously reviewed the evidence de novo and simply substituted its interpretation of the evidence for that of the magistrate.

In *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 703; 614 NW2d 607 (2000), our Supreme Court explained that judicial review of WCAC decisions should be very limited, citing the following language from *Holden v Ford Motor Co*, 439 Mich 257, 269; 484 NW2d 227 (1992):

If it appears on judicial appellate review that the WCAC carefully examined the record, was duly cognizant of the deference to be given to the decision of the magistrate, did not "misapprehend or grossly misapply" the substantial evidence standard, and gave an adequate reason grounded in the record for reversing the magistrate, the judicial tendency should be to deny leave to appeal

Under *Holden*, "[a]s long as there exists in the record any evidence supporting the WCAC's decision, and as long as the WCAC did not misapprehend its administrative appellate role (e.g., engage in de novo review; apply the wrong rule of law), then the judiciary must treat the WCAC's factual decisions as conclusive." *Mudel, supra* at 703-704.

The *Mudel* opinion explained that while the Commission reviews the magistrate's findings for compliance with the substantial evidence standard in accordance with MCL 418.861a(3), judicial review of the Commission's findings is more limited and solely designed to ensure the integrity of the administrative process. *Mudel, supra* at 699, 701. Under MCL 418.861a(13) the WCAC is required to conduct "a qualitative and quantitative analysis" of the evidence before the magistrate to "ensure a full, thorough, and fair review." In contrast, MCL 418.861a(14) provides that the "findings of fact made by the commission acting within its powers, in the absence of fraud, shall be conclusive." Under §861a(14), the WCAC's findings of fact are reviewed under the "any evidence" standard: "[i]f there is any evidence supporting the WCAC's factual findings, and if the WCAC did not misapprehend its administrative appellate role in reviewing decisions of the magistrate, then the courts must treat the WCAC's factual findings as conclusive." *Mudel, supra* at 709-710.

We conclude that the WCAC did not merely substitute its interpretation of the evidence for that of the magistrate, but instead carefully examined the evidence and concluded that the magistrate's finding of causation was not supported under the substantial evidence standard. The Commission's findings are adequately supported in light of the fact that Dr. Voci's causation testimony was tentative at best. Voci merely testified that peripheral nerve damage could be caused by exposure to solvents, and that CMT could make someone more vulnerable to such exposure. It was unclear whether plaintiff was exposed to the types of solvents or chemicals likely to cause peripheral nerve damage, or that he was exposed to amounts which could cause such damage. There is evidence supporting the WCAC's conclusions, and the Commission did not misapply or misapprehend its appellate role, so its findings of fact are treated as conclusive.

Affirmed.

/s/ Hilda R. Gage
/s/ Helene N. White
/s/ Jessica R. Cooper